

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

FREDERICK BANKS,)
)
Plaintiff,)
)
vs.) Case No. CIV-07-0331-F
)
DR. R. PARTYKA, et al.,)
)
Defendants.)

ORDER

Plaintiff, a federal prisoner appearing *pro se*, brings this action pursuant to 28 U.S.C. § 1331, 1346, Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), alleging various violations of his constitutional rights; he also brings claims under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a.

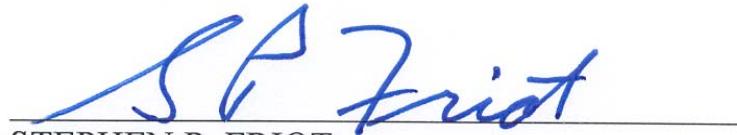
Magistrate Judge Doyle W. Argo's Report and Recommendation of August 21, 2007 is before the court. (Doc. no. 13.) In his Report, Magistrate Judge Argo recommends that this action be dismissed upon filing for failure to state a claim and for lack of personal jurisdiction over defendant Partyka. Plaintiff has objected to the findings and recommendations included in the Report.¹ As required by 28 U.S.C. §636(b)(1), the court has reviewed all objected to matters *de novo*. Having concluded that review, and after careful consideration of plaintiff's objections, the record, and

¹Plaintiff's objections include a statement that plaintiff "hereby moves this Court for leave to insert the Bureau of Prisons as another Defendant in this case." This is not a proper motion. Moreover, the court cannot simply "insert" another defendant. Finally, the court notes that any action which might be pursued against the Bureau of Prisons on the FOIA and Privacy Act claims should be brought, as stated in the Report, in the district where the claimant resides, in the district where agency records are situated, or in the District of Columbia.

the relevant authorities, the court finds that it agrees with the Report of the magistrate judge and that no purpose would be served by stating any further analysis here except for the additional analysis stated in the footnotes to this order.

Accordingly, the Report and Recommendation of Magistrate Judge Doyle W. Argo is **ACCEPTED, ADOPTED, and AFFIRMED** in its entirety, and this action is hereby **DISMISSED**. Counts 1, 3, and 4 are dismissed for failure to state a claim against these defendants, and count 2 is dismissed without prejudice because of lack of personal jurisdiction over Dr. R. Partyka.²

Dated this 11th day of September, 2007.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

07-0331p002.wpd

²Count 2 alleges violation of the First and Fifth Amendments. The Report implicitly construes count 2 as alleged against defendant Dr. R. Partyka, only. Dr. Partyka is the only defendant mentioned by name in count 2. However, because count 2 could be construed as alleged against defendant Keefer also, the court finds that count 2 fails to state a claim under either the First or the Fifth Amendment and that count 2 should also be dismissed on that basis.